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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

WILKENS, JANET MARIE

ART UNIT PAPER NUMBER

3637

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/595,943

Applicant(s)

EASTMAN, ROBERT

Examiner

Janet M. Wilkens

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16 and 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7, 10-15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view Vickers (5,678,247). Anderson teaches a portable enclosure (Fig. 1) comprising: a roof (40), door means (50) and four walls (20; the material of the walls being flexible enough to be folded but rigid enough to keep their shape when in their erected condition) wherein at least one wall has lining material (24) disposed thereon. The liner is for fire-proofing the tent and is located on an inner surface of the tent. For claims 1 and 10, Anderson fails to teach a lining material wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevents his scent from reaching the animals. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Anderson by using an alternate liner therein, one that prevents human odor from being carrier outside the tent, such as is taught by Vickers, instead of the "flame resistant" liner presently used, depending on the priorities of the campers to

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be using the tent (e.g. if the campers want to camp in an area with a lot of bears, etc. a tent with "odor-absorbing" qualities would be more of a priority than a tent with a liner that helps prevent fires.) Furthermore, the liner material of Vickers is equivalent to that of the liner of Anderson, both being made of material. Note: for claims 5 and 13, one of the fabric layers (20,22) can be considered "the fabric material" (the binder and other layer making up "the lining material").

For claims 3 and 11, Anderson in view of Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Anderson in view of Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claims 7 and 15, Anderson in view of Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been an obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Anderson in view of Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 9 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Vickers as applied to claims 1, 3-5, 7, 10-15 and 23 above,

and further in view of Tsai. As stated above, Anderson in view of Vickers teaches the specifications of claim 1, including a door on the enclosure. For claims 9 and 18-22, Anderson in view of Vickers fails to specifically teach that the door is a closable/zippered entrance. Tsai teaches a portable enclosure (Fig. 1) having a panel with a zippered entrance door (111) therein. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Anderson in view of Vickers by using an alternate door means thereon, i.e. using a zippered portion on wall (30) instead of the entrance way (50) presently used, to provide a door that would allow the enclosure to completely enclose the space there inside, preventing insects, etc from entering, and that would allow the enclosure to occupy less space when erected (no entrance way ground space needed).

Claims 1-5, 7 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Anderson and Vickers (5,678,247). Smith teaches a portable enclosure/hunting blind (Fig. 1) comprised of hingedly attached walls (18). For claim 1, Smith fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevents his scent from reaching the animals. Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for

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example.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Smith, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carrier outside the blind, such as the material taught by Vicker, to provide the hunting blind with an "odor-absorbing" feature. Note: for claim 5, one of the fabric layers (20,22) can be considered "the fabric material" (the binder and other layer making up "the lining material").

For claim 3, Smith in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Smith in view of Anderson and Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claim 7, Smith in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Smith in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 1, 3-5, 7, 8, and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai in view of Anderson and Vickers (5,678,247). Tsai teaches a

portable enclosure (Fig. 1) comprised of four triangular panels joined to form a pointed dome shape; one panel having a zippered entrance door (111) therein. For claims 1 and 18-22, Tsai fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevent his scent from reaching the animals. Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for example.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Tsai, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carrier outside the blind, such as the material taught by Vickers, to provide the hunting blind with an "odor-absorbing" feature. Note: for claim 5, one of the fabric layers (20,22) can be considered "the fabric material" (the binder and other layer making up "the lining material").

For claim 3, Tsai in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Tsai in view of Anderson and Vickers by making it one

of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claim 7, Tsai in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Tsai in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 1, 3-7, 9-16 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beavers in view of Anderson and Vickers (5,678,247). Beavers teaches a portable enclosure (Fig. 1) comprised of four X-shaped sub-frame assemblies (20), one foldably collapsible U-shaped support structure (24), four wall panels (Fig. 2; the material of the walls being flexible enough to be folded but rigid enough to keep their shape when in their erected condition) and a roof (see Fig. 2). A zippered entrance door (18) is contained in one of the wall panels of the enclosure. For claims 1 and 18-22, Tsai fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the

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hunter, i.e. prevents his scent from reaching the animals. Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for example.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Beavers, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carrier outside the blind, such as the material taught by Vickers, to provide the hunting blind with an "odor-absorbing" feature. Note: for claims 5 and 13, one of the fabric layers (20,22) can be considered "the fabric material" (the binder and other layer making up "the lining material").

For claims 3 and 11, Beavers in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Beavers in view of Anderson and Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claims 7 and 15, Beavers in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of

Beavers in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Allowable Subject Matter

Claim 17 is allowed.

Response to Arguments

Applicant's arguments filed June 16, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that Vickers is nonanalogous art: it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Vickers teaches odor-absorbing fabric made of a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevent his scent from reaching the animals. This type of material being transferable to other types of outdoor items, such as hunting blinds, tents, etc. Therefore, as stated above, it would have been obvious to modify the enclosure of Anderson by using this type of material/liner therein instead of the "flame resistant" liner presently used, depending on the desired need of the person making/using the tent. Furthermore, it would have been

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obvious to add this material on the hunting blind panels of Smith, the enclosure of Tsai and the enclosure of Beavers for the same advantages. (Note: The use of general liners on outdoor structures also being established by the reference of Anderson. See column 1, lines 23-26.) Finally, it should be noted that the three layers of the material of Vickers, as a whole, are being considered "the lining material". This limitation in the claims being constructed using "comprises" and therefore, features in addition to the binder and particles, i.e. the fabric layers that sandwich the binder/particles in Vickers, may be part of the structure. As for the lining material being open to the "air" and inside of the structure, as stated above (and considering all three layers of Vickers as the lining material), this would be the case in the art rejections' liner constructions. Note: even if the claims were amended to state that it is the binder material that is open to the air/inside of the structure, as discussed at the interview, the reference of Sesselmann teaches a scent-absorbing material having its binder material as an outer layer (see Fig. 4).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning: it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). See art rejections arguments above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (703) 308-2204. The examiner can normally be reached on Monday-Thursday.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Wilkens
September 4, 2003

Jm Wilk
JANET M. WILKENS
PRIMARY EXAMINER
Art Unit 3637